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JOINT ECONOMIC COMMITTEE,  
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April 19, 2018

Hon. Erik Paulsen  
Chairman  
Joint Economic Committee  
G-01 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Paulsen,

I am writing to request a hearing of the U.S. Congress Joint Economic Committee to investigate anti-competitive practices in the prescription drug market. There is evidence that anti-competitive behavior substantially drives up prices and that it may cost Americans billions of dollars a year.

A recent lawsuit by the Attorneys General of 45 states and the U.S. Department of Justice alleges price-fixing by 18 generic drug manufacturers<sup>1</sup>. It asserts that those companies systematically colluded to drive up prices and profits by forming agreements to divvy up markets and set prices. The plaintiffs name 15 generic drugs, including those for high blood pressure, diabetes, liver disease, epilepsy, asthma, glaucoma, fungal infection and other diseases. According to the complaint, “these agreements had the effect of artificially maintaining high prices for a large number of generic drugs and creating an atmosphere of competition when in fact no existed.”<sup>2</sup>

In theory, generic drugs should increase competition and reduce prices. However, an investigation by House Oversight and Government Reform Committee Ranking Member Elijah Cummings and Senator Bernie Sanders found that between July 2014 and December 2014, the prices for certain generic drugs rose dramatically, in some cases by more than 1,000 percent.<sup>3</sup> The details of the recent lawsuit suggest that collusive behavior in the generic drug industry may be taking place on a massive scale.

According to the Organisation for Economic Cooperation and Development (OECD), the United States pays more than \$1,000 per person on prescription drugs, which is the highest per-capita cost in the world.<sup>4</sup> In 2016, Americans spent \$341 billion in prescription drugs overall and more than \$75 billion on generic prescription drugs alone.<sup>5</sup> Generic drugs make up almost 90 percent of the total number of prescriptions dispensed on an annual basis.<sup>6</sup>

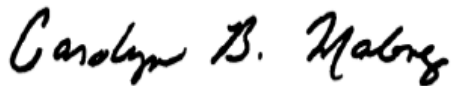
There is evidence that there also are anti-competitive aspects to the market for brand name prescription drugs. One tactic used by manufacturers of brand name drugs is to pay a potential generic competitor to delay introduction of a generic equivalent – “pay for delay” – effectively extending the length of the patent and maintaining high prices.<sup>7</sup> Researchers have found that the prices of competing brand drugs produced by different companies often also rise in lockstep. Ranking Member Cummings, Congressman Peter Welch, and Senator Sanders have raised concerns about this phenomenon in the multiple sclerosis and diabetes drug markets.<sup>8</sup>

The high cost of prescription drugs should be a high-priority, nonpartisan issue. A March 2018 poll by the Kaiser Family Foundation found that 80 percent of Americans think that prescription drug prices are “unreasonable.”<sup>9</sup> The same survey also found that 83 percent say that Republicans “are not doing enough” on the issue and that 82 percent say the same about Democrats.

The U.S. Congress Joint Economic Committee can play a role in helping to shed light on the economic impact of anti-competitive behavior in the market for brand name and generic prescription drugs. Moreover, it can take advantage of a broader opportunity to study other anti-competitive aspects of our economy, which stifle innovation and increase costs on consumers. When “free markets” aren’t truly free, Americans pay the price.

Thank you for your consideration of my request.

Sincerely,

A handwritten signature in black ink that reads "Carolyn B. Maloney". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

CAROLYN B. MALONEY  
Senior House Democrat, Joint Economic Committee

## ENDNOTES

<sup>1</sup> Charles Lane, “Probe into Generic Drug Price Fixing Set To Widen,” National Public Radio, Mar. 7, 2018, <https://www.npr.org/2018/03/07/590217561/probe-into-generic-drug-price-fixing-set-to-widen>; Karen Freifeld, “U.S. states allege broad generic drug price-fixing collusion,” Reuters, Oct. 31, 2017 <https://www.reuters.com/article/us-usa-generics/u-s-states-allege-broad-generic-drug-price-fixing-collusion-idUSKBN1D0201>

<sup>2</sup> State Attorneys General vs. Generic Prescription Drug Manufactures, Case 2:17-cv-03768-CMR, filed Oct. 31, 2017, [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR\\_Docs/2017/2017-10-31\\_State.AGs\\_ProposedAmendedComplaint.PV.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2017/2017-10-31_State.AGs_ProposedAmendedComplaint.PV.pdf);

<sup>3</sup> Ed Silverman, “Lawmakers Probe ‘Staggering’ Price Hikes for Generic Drugs.” The Wall Street Journal, Oct. 2, 2014, <https://blogs.wsj.com/pharmalot/2014/10/02/lawmakers-probe-staggering-price-hikes-for-generic-drugs/>; Rosenthal, Elisabeth, “Officials Question the Rising Costs of Generic Drugs,” The New York Times, Oct. 7, 2014, [www.nytimes.com/2014/10/08/business/officials-question-the-rising-costs-of-generic-drugs.html](http://www.nytimes.com/2014/10/08/business/officials-question-the-rising-costs-of-generic-drugs.html); House Committee on Oversight and Government Reform Democrats, “Cummings and Sanders Investigate Staggering Price Increases for Generic Drugs,” Oct. 2, 2014, <https://democrats-oversight.house.gov/news/press-releases/cummings-and-sanders-investigate-staggering-price-increases-for-generic-drugs>

<sup>4</sup> Organisation for Economic Cooperation and Development, graph of per-capita pharmaceutical spending, 2015, <https://data.oecd.org/healthres/pharmaceutical-spending.htm>; Dana O. Sarnak, David Squires, Greg Kuzmak, Shawn Bishop, “Paying for Prescription Drugs Around the World: Why Is the U.S. an Outlier?” The Commonwealth Fund, Oct. 5, 2017 [www.commonwealthfund.org/publications/issue-briefs/2017/oct/prescription-drug-costs-us-outlier](http://www.commonwealthfund.org/publications/issue-briefs/2017/oct/prescription-drug-costs-us-outlier)

<sup>5</sup> Suzanne M. Kirchhoff, Judith A. Johnson, Susan Thaul, “Frequently Asked Questions About Prescription Drug Pricing and Policy,” Congressional Research Service, May 2, 2017, <https://fas.org/sgp/crs/misc/R44832.pdf>; Centers for Medicare and Medicaid Services, “National Health Expenditures 2016 Highlights,” Center for Medicare & Medicaid Services, 2017, [www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf](http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/highlights.pdf)

<sup>6</sup> Generic Pharmaceutical Association, “2017 Generic Drug Savings and Access in the United States,” Oct. 2017, <http://bit.ly/2tv5gzY>

<sup>7</sup> Federal Trade Commission, “FTC Sues Endo Pharmaceuticals Inc. and Others for Illegally Blocking Lower-Cost Generic Versions of the Branded Drugs Opana ER and Lidoderm,” Mar. 31, 2016, <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-sues-endo-pharmaceuticals-inc-others-illegally-blocking-lower>; Henry Waxman, Bill Corr, Kristin Martin and Sophia Duong, “Getting to the Root of High Prescription Drugs Prices: Drivers and Potential Solutions,” The Commonwealth Fund, July 2017, [http://www.commonwealthfund.org/~media/files/publications/fund-report/2017/jul/waxman\\_high\\_drug\\_prices\\_drivers\\_solutions\\_report.pdf](http://www.commonwealthfund.org/~media/files/publications/fund-report/2017/jul/waxman_high_drug_prices_drivers_solutions_report.pdf)

<sup>8</sup> “Cummings and Welch Launch Investigation of Drug Companies’ Skyrocketing Prices for MS Drugs,” Office of Congressman Peter Welch, Aug. 17, 2017, <https://welch.house.gov/media-center/press-releases/cummings-and-welch-launch-investigation-drug-companies-skyrocketing>

<sup>9</sup> Ashley Kirzinger, et al, “Kaiser Health Tracking Poll – March 2018: Views on Prescription Drug Pricing and Medicare-for-All Proposals,” The Henry J. Kaiser Family Foundation, Apr. 4, 2018, [www.kff.org/health-costs/poll-finding/kaiser-health-tracking-poll-march-2018-prescription-drug-pricing-medicare-for-all-proposals/](http://www.kff.org/health-costs/poll-finding/kaiser-health-tracking-poll-march-2018-prescription-drug-pricing-medicare-for-all-proposals/)